
Introduced by Senator Burton

February 20, 2002

An act to amend Section 1281 of the Code of Civil Procedure, and to add Section 12952 to the Government Code, relating to employment arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 1538, as introduced, Burton. Employment arbitration agreements.

Existing law generally provides that written agreements to submit controversies to arbitration are valid and enforceable.

This bill would amend existing law to invalidate predispute arbitration agreements between employers and employees as they relate to actions for employment pursuant to the Fair Housing and Employment Act (FEHA).

This bill would also establish that it is an unlawful employment practice to require an employee to waive rights and procedures established by FEHA, or to take any adverse employment action against any person in retaliation for refusing to waive rights and procedures established by FEHA.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares that it is the
- 2 public policy of the State of California to ensure that employees
- 3 have the full benefit of the rights and protections contained in the
- 4 Fair Employment and Housing Act and that employees not be

1 deprived of those rights and protections by the use of coerced and
2 involuntary waivers. It is the purpose of this act to ensure that any
3 agreement between an employer and employee to arbitrate any
4 claim arising under the FEHA is a matter of consent and not
5 coercion.

6 The Legislature finds and declares that involuntary predispute
7 arbitration provisions that limit an employee's access to the
8 Department of Fair Employment and Housing and limit the
9 authority of the department to investigate and pursue meritorious
10 claims of discrimination are against the public policy of this state.

11 SEC. 2. Section 1281 of the Code of Civil Procedure is
12 amended to read:

13 1281. ~~A~~ (a) *Except as provided in subdivision (b), a written*
14 *agreement to submit to arbitration an existing controversy or a*
15 *controversy thereafter arising is valid, enforceable, and*
16 *irrevocable, save upon such grounds as exist for the revocation of*
17 *any contract.*

18 (b) *Subdivision (a) does not apply to any predispute arbitration*
19 *agreement between an employer and employee that violates*
20 *Section 12952 of the Government Code.*

21 SEC. 3. Section 12952 is added to the Government Code, to
22 read:

23 12952. (a) It is an unlawful employment practice for an
24 employer, as defined in subdivision (d) of Section 12926, to
25 require an employee or potential employee to waive rights or
26 procedures provided for in this chapter, including, but not limited
27 to, the right to file a complaint with the department pursuant to
28 Section 12960 or the right to file a civil action pursuant to Section
29 12965, as a condition of employment or continued employment.

30 (b) It is an unlawful employment practice for an employer, as
31 defined in subdivision (d) of Section 12926, to refuse to hire,
32 harass, discharge, expel, or otherwise discriminate against an
33 employee or potential employee because he or she refuses to waive
34 rights or procedures provided for in this chapter.

35 (c) A waiver of rights or procedures provided for in this
36 chapter, in violation of subdivision (a), is void, and is deemed
37 involuntary, beyond the reasonable expectations of the parties,
38 unconscionable, and against public policy.